

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS GREGORY LILLEY

Defendant.

Case No. 14-cr-40058-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on a motion from defendant Thomas Gregory Lilley that was docketed as a motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) (Doc. 58). After further review of the motion, it is clear that it is not a motion for a sentence reduction but instead a motion seeking to vacate his sentence in the wake of *Johnson v. United States*, 135 S. Ct. 2551 (2015), relief that is only available under 28 U.S.C. § 2255. However, the Court is hesitant to construe this as a § 2255 motion without a clear indication that Lilley intends to invoke that statute. “[T]he court cannot so recharacterize a pro se litigant’s motion as the litigant’s first § 2255 motion unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law’s ‘second or successive’ restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing.” *Castro v. United States*, 540 U.S. 375, 377 (2003).

Accordingly, the Court **WARNS** Lilley that if he does not file a motion to withdraw his pending motion on or before July 8, 2016, the Court will construe it as a § 2255 motion and Lilley will then be subject to the second or successive filing restrictions contained in 28 U.S.C. § 2255(h).

IT IS SO ORDERED.

DATED: June 23, 2016

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE